

IN THE SUPREME COURT OF SEYCHELLES

SEYCHELLES MARKETING BOARD

PLAINTIFF

VERSUS

JACQUES LANGUILLA

DEFENDANT

Civil Side No 210

of 2002

Mr. F. Bonte for the Plaintiff

Mr. F. Chang Sam for the Defendant

JUDGMENT

Perera J

The Plaintiff claims a sum of Rs.77,061.76 from the defendant for goods sold and delivered. Juddoo J Ruling on a plea *in limine litis* raised by the defendant that the plaint is time barred by prescription, held that –

“Where the plaintiff alleges that the purchases made by the defendant were “on credit” the period of prescription will only start to run once the agreed period of credit have expired. There is no averment in the pleadings to enable the Court to assess and determine the period or periods of credit pertaining to the alleged transactions between the plaintiff and the defendant”.

He therefore held that the plea could only be considered with the merits of the case.

The case for the plaintiff is that, building materials were supplied to the defendant on credit from 1992 to 1994 for a total sum of Rs.77,061.76. It is averred that that sum has not been paid despite repeated requests. Mr Raymond Simeon the Investigation Officer of the S.M.B. produced a copy of the “*debtors statement*” relating to the defendant from 31st March 1992 to 21st December 1994 which shows that a sum of Rs.77,061.76 was outstanding on 30th September 1998. He stated that as Investigation Officer, he checked the receipts but found no payment to correspond with the invoices in the statement. He also stated that the credit period for payment was 30 days from the date of the invoice. Shown a receipt for Rs24,012, Mr. Simeon admitted

that it was a payment to S.M.B, but stated that it was not recorded against the payments for the invoiced amounts in the statement. He also stated that those payments would have been cleared, and only those outstanding were in the final “*debtors statement*”.

Mr Simeon stated that the last invoice was dated 24th December 1994. Hence on the basis of a 30 day credit arrangement, credit was stopped. Following the Ruling of Juddoo J, that the period of prescription commenced from the date the agreed period of credit stopped, Mr Chang Sam, Counsel for the defendant submitted that the claim was time barred under Article 2271 from January 1995, as the plaint was filed only on 1st August 2002. Juddoo J's Ruling was obiter, as he stated that the pleadings did not disclose the agreed credit period.

At the end of the plaintiff's case, Mr Chang Sam made a submission of no case to answer, on the ground that the plaint was prescribed under Article 2271, as prescription commenced from the date the payments became due, namely January 1995. Relying on the case of ***Teemooljee Ltd v. Thomas (1965) S.L.R. 169***, he submitted that a letter of demand was insufficient to interrupt prescription. In any event, he submitted that no letter of demand was sent to the defendant.

However, there is on file a letter dated 22nd September 2000 (*marked exhibit Pi*) before Juddoo J at the time the plea of prescription was taken up. That letter, addressed to Mr Bonte by Mr Chang Sam is as follows-

“Dear Sir,

Mr. Jacques Languilla – SMB

I refer to your letter of 12th September 2000 to Mr. Jacques Languilla of Grand Anse Praslin in respect of a demand by SMB for the payment of the sum of Rs. 77,061.76.

I act for Mr Languilla. Mr Languilla denies owing SMB the above or any other sum and any legal proceedings instituted by SMB for the purpose of recovering any sum whatsoever will be resisted.

I would be grateful if you would refer all return correspondence regarding the above to our chambers.

Thank you

Yours faithfully

Sgd. Francis Chang Sam
Attorney at Law”

There is therefore an admission that a letter of demand was sent to the defendant on 12th September 2000. However the statement of accounts was sent to him only on 19th October 2000 (P2). No further correspondence has been produced with regards to this matter.

Article 2274 of the Civil Code provides that in a continuing contract, prescription runs from the statement of account. In the case of ***Hughes and Polkinghorn v North Island Company Ltd (1984) S.L.R. 154*** it was held inter alia that –

“It is clear from the jurisprudence that the period of prescription for the rights or action under Article 2271 and 2274 starts running from the time that the account started is submitted”.

In this case, the statement of account as at 30th September 1998 was submitted to the defendant on 19th October 2000. Demand for payment had been made on 12th September 2000. The credit sales continued from 31st March 1992 to 21st December 1994. On the basis of the evidence, although the credit period ended on 21st January 1995, in terms of Article 2274, the period of prescription in a continuing contract commenced on 19th October 2000. Therefore the present claim which was filed on 1st August 2002, is not time barred under the provisions of Article 2271 of the Civil Code.

As was held in the case of ***Bouchereau v. Rassool (1975) S.L.R. 238 at 242*** –

“It is a settled rule of practice and procedure that on a submission by the defendant

of no case to answer in a civil case, the defendant must win or fall on his submission so that if he chooses to make a submission of no case and the Ruling goes against him, he is not entitled to call evidence in answer”.

In the case, apart from the issue of prescription, evidence was adduced by the plaintiff to substantiate the averments in the plaint. The defendant failed to rebut the evidence of the plaintiff’s witnesses in cross examination by adducing proof of payment of the amounts in the statement of account (P1), which was his burden under Article 1315 of the Civil Code. In the case of ***Victor v. Azemia (1977) S.L.R. 195 at 196***, the English Rule relating to “no case” was followed, and the Court stated –

“In future however Counsel should bear in mind that if they wish to make a submission of no case to answer at the close of the plaintiff’s case, they must elect to call no evidence and are bound by such election, and judgment will be given for plaintiff or the defendant on the submission.”

In this case, Learned Counsel for the defendant elected not to call evidence, and to abide by the Ruling on the issue of prescription. Accordingly, as the submission of the defendant has failed, judgment is entered in favour of the plaintiff in a sum of Rs.77,061.76, together with interest and costs.

.....

A..R. PERERA

JUDGE

Dated this 11th day of June 2007